



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

in cases of civil liability. A dictum in *Commonwealth v. Pierce*, 138 Mass. 165, urges that the conduct of a reasonably prudent man under like circumstances — an external standard — should be the test in criminal cases as well. The way seems clear to choose between these opposing views. It is essential in every common law crime that a *mens rea*, an evil state of mind, concur with a criminal act. To adopt the standard of the community as a measure of guilt would result in the conviction of many who believed they were doing their duty. However conscientious the purpose of an ignorant man, he would be punished merely because he was unfortunate enough to be lacking in ordinary prudence. No one who exercises his best judgment is a fit subject for indictment.

THE OWNERSHIP OF LAKE MICHIGAN. — The rule of the English common law, which gave to the riparian owners the soil beneath non-tidal rivers and all inland waters seemed scarcely applicable to the immense lakes of this country. And in regard to the rights of littoral owners on these inland seas, there has grown up a confused mass of law which is largely the result of local usage — in some jurisdictions the submerged soil goes entirely to the shore owner; in some his property reaches to low water; in others only to high water. The Illinois courts have declared that the soil beneath Lake Michigan belongs to the State — just as at common law the soil of the sea belongs to the crown — and the land of the littoral owner is bounded by high water. The United States Supreme Court in the case of *The Illinois Central Railroad Co. v. Illinois*, 146 U. S. 387, attempted to fasten an exception on this strict rule. That case seemed to declare — practically without authority — that the littoral owner had a right to wharf out into Lake Michigan for the purpose of navigation.

In the recent case of *Revell v. The People*, Chicago Legal News, Dec. 31, 1898, page 157, another analogous claim was made that a littoral owner had a right to build out piers into the lake to prevent the gradual erosion of his land. The Supreme Court of Illinois, however, denied the existence of such a right. They considered the Illinois Central case as discredited in *Shively v. Bowlby*, 152 U. S. 1, and refused flatly to follow it, laying down again the original rule that the State was the absolute owner of the submerged land. The adherence to the strict doctrine seems sound. It gives a definite and intelligible doctrine not likely to be the subject of litigation. It is a hardship that the shore owner may not wharf out to protect himself or to make his land valuable for shipping, especially as the damage from such acts is usually infinitesimal; on the other hand, it is clearly public policy that the State maintain final control of all public waters, and that its ownership be unhampered. The difficulties the question presents are legislative or executive rather than legal, to be met by a temperate administration of the absolute power, with discreet connivance at minor encroachments and a willingness to grant wharfing privileges, rather than by an intricate system of rights.

A CITIZEN'S PRIVILEGES AND IMMUNITIES. — The Federal Supreme Court has lately held invalid a clause of the Tennessee statute providing rules for the incorporation and regulation of certain foreign corporations. The objectionable clause made the property which the corporation held within the State primarily liable for debts due to residents of Tennessee.

By reason of this clause, a citizen of Ohio had his claim postponed; and the court holds that he has been deprived of the privileges and immunities of citizenship in violation of Article IV., section 2, of the United States Constitution. *Blake v. McClung*, 19 Sup. Ct. Rep. 165. The first step that had to be taken in reaching this conclusion was to hold that the preferred class of persons, "residents of Tennessee," comprised in reality "citizens of Tennessee"; otherwise there could be no discrimination against citizens of other States, *qua* citizens. Yet this step is difficult to take in view of the principle that of two constructions a statute should be given the one which keeps it within the limits of the constitution; and it would seem that the majority of the court, who thought the statute invalid if it discriminated against citizens of other States, should have given it the more literal construction unless as so construed it would be hopelessly unreasonable. Cf. Holmes, J., in *Commonwealth v. Perry*, 155 Mass. 117. And hopelessly unreasonable a discrimination is not, which favors residents of the State without reference to citizenship. A greater reason, in fact, might be thought to exist for a legislature's giving protection to all those residing within its jurisdiction than for protecting those residents and non-residents who happened to be citizens of the State.

The taking of this difficult step, however, does not leave the present decision free from doubt; and there is great force in the dissent of Mr. Justice Brewer, in which the Chief Justice concurred. When the State granted the foreign company the favor of incorporation, it could exact certain securities for the protection of its own citizens. For their sole benefit the State might have required pledges. This is admitted by the majority of the court, and in admitting it they seem to admit the whole case. For if the corporation might be required to pledge some of its property, the property pledged might amount to all that the corporation owned within the State. If the legislature could compel this, why should it require the formalities of a pledge or a mortgage? A mortgage consists in acts by the parties to which the law attaches legal consequences; but the legislature has power to enact these legal consequences without prior acts by the parties. That was in effect done in the principal case; certain persons were given a claim to property without the formalities of a mortgage or deposit as security; but the legal consequences are much alike in either case and the attempt made in the majority opinion to distinguish the two is not convincing. So far as justice to foreign dealers is concerned, the incumbrance by statute is as fair as that by act of the parties; a statute on the books is quite as obvious as a record in the registry of deeds. Granted then that the statute protected citizens of Tennessee as such, it is hard to see what deprivation of privileges and immunities was inflicted on the citizens of other States.

RECENT CASES.

ADMIRALTY — JURISDICTION — PERSONAL INJURIES. — A ladder attached to the side of a ship was negligently left in an unsecure condition. The libellant, in attempting to leave the ship by means of the ladder, was thrown upon a wharf and injured. *Held*, that a Court of Admiralty has jurisdiction of libellant's claim for damages. *The Strabo*, 90 Fed. Rep. 110 (Dist. Ct., N. Y.).

Not only is this decision sound, but the true principle upon which these jurisdictional questions depend is well stated. There is much confusion of statement in the cases as